IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 17 OF 1999

Vithoba Tukaram Bodke .. Appellant

V/s

The State of Maharashtra .. Respondent

Mrs. Usha V. Kejriwal, A.P.P. for the Respondent.

CORAM : H.L. GOKHALE &
A.S. AGUIAR, JJ.

DATE : 25TH NOVEMBER 2004

P.C. :

1. This Criminal Appeal seeks to challenge the judgment and order dated 18th November 1998 passed by the IVth Additional Sessions Judge, Nashik in Sessions Case No.10 of 1998 wherein the Appellant - Accused was held guilty of the charges under Sections 302 and 201 of I.P.C. and was ordered to be sentenced to suffer imprisonment for life and fine.

2. The Appeal was heard by us. On 5th August 2004, Aguiar J. gave the judgment confirming the judgment and order of the learned Sessions Judge, Nashik. Gokhale J. was of the opinion that on reappreciation of the evidence on record, it was not sufficient to warrant conviction under Section 302 as well as Section 201 of I.P.C. Both of us gave our reasons for coming to the

conclusions that we arrived at and they are reflected in the judgments given by us.

3. In view of difference of opinion, the matter was referred under Section 392 of Cr.P.C. by the Hon'ble Chief Justice to a Third Judge, i.e. V.G. Palshikar J. Palshikar J. gave his opinion on 29th October 2004 wherein he expressed his opinion that he is in complete agreement with the opinion expressed by Gokhale J. and opined that the Appeal deserves to be allowed.

5. Hence in view of the majority opinion, the following judgment and order:-

. The Appeal is allowed. The impugned judgment and order dated 18th November 1998 passed by the IVth Additional Sessions Judge, Nashik in Sessions Case No.10 of 1998 is set aside. The Appellant - Accused is acquitted of the charges under sections 302 and 201 of I.P.C. The Accused has been in custody right from the date of incident, i.e. 5th October 1997. He is ordered to be set free, if not required otherwise.

(H.L. GOKHALE J.)

(A.S. AGUIAR J.)